Petition

81-1552

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No. .....

In the Supreme Court of the United States

OCTOBER TERM, 1981

SYLVIA GINO BINDER,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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QUESTION PRESENTED

Whether deportation under Section 241(a)(12) of the Immigration and Nationality Act for ownership and management of a house of prostitution deprives petitioner of due process under the law where the right to operate is established and conferred pursuant to state law and local ordinance.

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In the Supreme Court of the United States

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SYLVIA GINO BINDER,

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vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

SYLVIA GINO BINDER, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Ninth Circuit entered in said court on November 19, 1981, affirming the decision of the Board of Immigration Appeals finding petitioner deportable under Section 241(a)(12) of the Immigration and Nationality Act.

OPINION BELOW

A Memorandum decision rendered on November 19, 1981 by the United States Court of Appeal for the Ninth Circuit and is reproduced in Appendix A to this Petition.

STATEMENT OF JURISDICTION

The judgement of the United States Court of Appeals for the Ninth Circuit was entered on November 19, 1981. The jurisdiction of this Court is invoked pursuant to 28 USC §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendent V:

> "No person shall be . . . deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Immigration and Nationality Act, Section 241 (a) (12); 8 U.S.C. 1251(a) (12)

> "(a) Any alien in the United States shall, upon the order of the Attorney General, be deported who
>
> (12) . . . is or at any time after entry has been manager, . . . of a house of prostitution or other immoral place;"

STATEMENT OF THE CASE

This case is an immigration case concerning the deportation of petitioner, a permanent resident of the United States and a citizen of France. The basis for deportation is premised upon petitioner's ownership and management of two houses of prostitution situated in the County of Winnemucca, State of Nevada.

Although prostitution and related acts are proscribed under Nevada state law, state law permits counties within the state to decide for themselves whether or

not to permit operation of houses of prostitution. See Nevada Revised Statutes, Section 244.345. Those counties within the state who elect this option thereafter enact local ordinances for licensing and regulating the operation of these establishments.

Petitioner underwent a carefull background check prior to the issuance of a license to operate. The county of Winnemucca issued licenses to petitioner to operate two such businesses. Since the commencement of the operation of both establishments, petitioner has conformed with the applicable laws of the county and State of Nevada, and has paid all taxes required from the earnings of the business.

On July 21, 1978 an Order to Show Cause was issued by the Immigration and Naturalization Service alleging that petitioner was deportable because of her ownership and operation of the aforementioned houses of prostitution.

On May 5, 1980 a hearing was held before the Immigration Service and petitioner was found deportable as charged in the Order to Show Cause. The Immigration Judge rejected petitioner's contentions that she had a constitutional right to engage in the operation of both establishments and that Section 241(a)(12) of the Immigration and Nationality Act applied only to managers or owners of unlawful houses of prostitution.

Petitioner appealed to the Board of Immigration Appeals and her appeal was dismissed on November 5, 1980. The Board upheld the Immigration Judge's decision and found that petitioner was not exempt from deportation on the grounds that she operated a lawful house of prostitution.

Petitioner sought judicial review before the United States Court of Appeal for the Ninth Circuit pursuant to Section 106(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1105a(a). The Appeals Court denied the petition for review on November 19, 1981. The court held that Congress may make even legal conduct the basis for deportation.

ARGUMENT FOR ALLOWANCE OF WRIT

Application of Section 241(a)(12) of the Immigration and Nationality act Against a Permanent Resident Alien Engaged In a Lawful Business or Occupation Under the Law of the State of Residence is an Unconstitutional Denial of Due Process Under the Law

The authority to formulate American Immigration policy rests with the Congress of the United States. This authority is contained in Article 1, Section 8, Clause 3 of the Constitution which provides that Congress shall have the power to regulate commerce with foreign nations, and among the various states, and with Indian tribes. This power is plenary and exclusive, See *Henderson v. Mayor* (1876) 92 U.S. 259, 23 L.Ed. 543; *Chy Lung v. Freeman* (1876) 92 U.S. 275, 23 L.Ed. 550.

Justice Frankfurter ennunciated the plenary character of Congress's power to determine immigration policy as follows:

> "The conditions for entry of every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality to aliens, the grounds on which such determination

> shall be based, have been recognized as matters solely for the responsibility of the Congress and wholly outside the power of this Court to control. Courts do enforce the requirements imposed by Congress upon Officials in administering immigration laws and the requirement of Due Process may entail certain procedural observances. But the underlying policies of what classes of aliens shall be allowed to stay, are for Congress to determine . . ." *Harrisiades v. Shaughnessy* (1952), 342 U.S. 580, 96 L.Ed. 586, 72 S.Ct. 512.

In affirming the decision of the Immigration Judge and the Board of Immigration Appeals in the instant case, the Court of Appeals for the Ninth Circuit cited and relied upon this view of Congressional plenary power in the determination of alien concerns.

Nonetheless, this plenary power over aliens has been tempered by the fact that aliens have long been accorded procedural due process.

> "It must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by the (Fifth and Sixth) amendments, and that even aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty or property with due process of law." *Wong Wing v. United States* (1896) 163 U.S. 228, 238, 41 L.Ed. 140, 143, 16 S.Ct. 977.[1]

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[1] Aliens are protected against unreasonable searches and seizures. *Bilokumsky v. Tod* (1923) 263 U.S. 149, 155, 68 L.Ed. 221, 224, 44 S.Ct. 54. Right to jury trial guaranteed to aliens

To a more qualified degree aliens are entitled to substantive due process. Thus, "the right to work for a living in the common occupations of the community is of the very esence of the personal freedom and opportunity that it was the purpose of the Fourteenth Amendment to secure." *Truax v. Raich* (1915) 239 U.S. 33, 41, 60 L.Ed. 131, 135, 36 S.Ct. 7. Aliens within the United States are persons within the Fifth and Fourteenth Amendment and are entitled to equal protection. *Yick Wo. v. Hopkins* (1886) 118 U.S. 356, 30 L.Ed. 220, 65 S.Ct. 1064.

The protections of substantive due process and equal protection afforded aliens is qualified to the extent that aliens have never been conceded legal parity with citizens. Certain types of discrimination between aliens and citizens have been allowed provided that the basis for different treatment was reasonable. See *Harisiades v. Shaughnessy*, supra, at 586. Most recently this Court has upheld a California Statute requiring peace officers to be United States citizens. *Cabell v. Chavez-Salido*, (1982) ___ U.S. ___ (No. 80-990).

Behind the notion of Due Process, whether it be procedural or substantive, is the concept of fundamental fairness. This quality has been stated in the following terms:

> "It is now the settled doctrine of this Court that the Due Process Clause embodies a system of rights based on moral principles so deeply embedded in the traditions and feelings of our people

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under concept of due process. *Colver v. Skeffington* (1920 D.C. Mass) 265 F 17, revd on other grounds *Skeffington v. Katzeff* (CA1) 277 F 129.

> as to deemed fundamental to a civilized society as conceived by our whole history. Due Process is that which comports with the deepest notions of what is fair and right and just." *Solesbee v. Balkcom* (1950) 339 U.S. 9, 94 L.Ed. 605, 609, 70 S.Ct 457 (J. Frankfurter dissenting), reh. den. 339 U.S. 926, 94 L.Ed. 1348, 70 S.Ct. 618.

Whether or not Due Process has been violated in a particular instance is tested by ascertaining whether the practice in question "offends some principal of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts* (1934) 291 U.S. 97, 105, 78 L.Ed. 674, 677, 54 S.Ct. 330. 90 ALR 575, ovrld on the other grounds *Molloy v. Hogan* 378 U.S. 1, 12 L.Ed2d 653, 84 S.Ct. 1489. Due Process is satisfied only if there is respect for those rights which are "implicit in the concept of ordered liberty." *Palko v. Connecticut* (1937) 302 U.S. 319, 325, 82 L.Ed. 288, 292, 58 S.Ct. 149.

In the present case this petitioner does not dispute the power of Congress to formulate and administer policy concerning alien affairs. However, just as surely petitioner cannot accept Congress's right to regulate or superscede the State of Nevada in the administration of its internal affairs. The determination of what business will affect the health, safety and welfare of its residents is properly a matter left to the determination of the individual states.

The State of Nevada permits the operation of houses of prostitution within a carefully regulated framework of local licensing and regulation. Petitioner has followed

and adhered to this regulatory scheme in the course of operating her business establishments.

Although the State has conferred the right to operate a specific business upon the petitioner, that right will be taken away by operation of petitioner's deportation. Petitioner was not acting in a legal vacuum where the State was silent on the matter of operation of houses of prostitution. Nevada law is not merely permissive on this subject, but conspicuously regulatory. The concept of due process and fairplay are clearly violated when the resident of a state becomes subject to deportation for the exercise of a state conferred right to operate a business of purely local concern.

Petitioner's situation is somewhat analogous to that of the peace officer who in good faith enforces a state law which is later determined to be either unconstitutional or otherwise unenforceable. Pursuit of the law does not render the peace officer subject to civil or criminal liability. The same cannot be said of the petitioner's pursuit of Nevada law, but it should be.

CONCLUSION

The issue of whether a lawful permanent resident alien can be subject to deportation for the exercise of a state conferred right concerning a matter of purely local concern raises a significant question about the application of due process to petitioner. She submits that deportation under these circumstances violates due process because every resident, whether citizen or alien, should be free and safe from governmental intrusion or sanction when they comply and pursue the law of the state in which they reside.

In view of the foregoing argument, it is respectfully submitted that this petition be granted.

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Appendix

APPENDIX A

Memorandum Opinion of United States Court of Appeals for the Ninth Circuit.

SYLVIA GINO BINDER, Petitioner, vs. IMMIGRATION AND NATURALIZATION SERVICE, Respondent. No. 81-7275, Argued and Submitted: November 9, 1981, Decided: November 19, 1981. Petition to Review a Decision of the Board of Immigration Appeals, Before: BAZELON,* SKOPIL and POOLE, Circuit Judges.

Binder petitions for review of a decision by the Board of Immigration Appeals finding her deportable under 8 U.S.C. § 1251(a)(12) for managing a house of prostitution. Binder admits owning and managing two houses of prostitution in the state of Nevada, which are legal under Nevada law. We agree with the Immigration Judge and the BIA that 8 U.S.C. § 1251(a)(12) does not exempt managers of legal houses of prostitution.

Binder's argument that the statute denies her equal protection, because it permits a citizen resident — but not an alien resident — to own and manage lawfully a house of prostitution is misplaced. Congress distinguishes between aliens and citizens in § 1251(a)(12) only incidentally to its regulation of entry and expulsion of aliens. In excerising its broad and plenary power over aliens, Congress must make distinctions between aliens and citizens.

Congress has broad enough power over aliens and the conditions of their residence in the United States to

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* The Honorable David L. Bazelon, Senior Judge for the District of Columbia Circuit, sitting by designation.

determine that aliens connected with prostitution may not remain in this country. *Bugajewitz v. Adams*, 228 U.S. 585, 591 (1913); *Zakonaite v. Wolf*, 226 U.S. 272, 275 (1912). The legality of Binder's occupation under Nevada law, therefore, is irrelevant. Congress may make even legal conduct the basis for deportation.

AFFIRMED.

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No. 81-1552

IN THE SUPREME COURT OF THE

UNITED STATES

SYLVIA GINO BINDER,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Appendix B
Decision of the Board of Immigration Appeals

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APPENDIX B

Decision of the Board of Immigration Appeals

SYLVIA GINO BINDER, Respondent, In Deportation Proceedings Appeal, vs. IMMIGRATION AND NATURALIZATION SERVICE, File No. A14 096 426 San Francisco, CA November 5, 1980.

In a decision dated May 5, 1980, an immigration judge found the respondent deportable under section 241(a)(12) of the Immigration and Nationality Act, 8 U.S.C 1251(a)(12), as an alien who, after entry into the United States, managed a house of prostitution. The respondent appealed. The appeal will be dismissed.

The respondent is a 59-year old citizen of France and lawful permanent resident of the United States. In an Order to Show Cause issued on July 21, 1978, it was alleged tht she was the owner and operator of two houses of prostitution in Winnemucca, Nevada, the "Villa Joy" and "Mona's Club." At a deportation hearing held on May 5, 1980, the respondent at first denied that she had ever controlled a house of prostitution, but later admitted that she is the owner and operator of the two establishments named above, and that they are houses of prostitution. Tr. at 22. Based on these admissions and on the testimony of a Winnemucca police officer who personally knew the respondent as the owner and operator of these houses, the immigration judge found the respondent deportable as charged.

In her Notice of Appeal, the respondent states that her deportability was not based on clear, convincing, and unequivocal evidence in that the finding of deportability was based on hearsay and "other

incompetent evidence." She further argues that because the immigration judge "conducted extensive examination to establish the government's case," she was denied a fair hearing. Finally, she argues that because prostitution is legal in Nevada and Winnemucca, her conduct "is not prescribed (sic) by section 241(a)(12)."

In her brief on appeal, the respondent appears to have abandoned her first two arguments, and in fact admits that she owns and runs prostitution houses. For the record, however, we will state that we find these arguments to be without merit. The respondent's own testimony, and much of that given by the police officer, was neither hearsay nor incompetent, and this testimony established beyond doubt that the respondent owns and operates two houses of prostitution in Nevada. Her deportability has thus been sufficiently proven. As to her arguments regarding the active role taken by the immigration judge at the hearing, we note that the immigration judge did perhaps engage in more questioning than was prudent. The trial attorney for the Immigration and Naturalization Service, however, conducted most of the questioning. We find no denial of due process, and conclude that the respondent's hearing was a fair one.

We turn next to the respondent's primary argument. The formulation of policies pertaining to the right of aliens to enter the United States, and their right to remain here, has been exclusively entrusted to the Congress. As stated by the Supreme Court in Harisiades v. Shaughnessy, 342 U.S. 592 (1952), "Such matters are so exclusively entrusted to the political branches of government as to be largely immune from

judicial inquiry or interference." Id. at 589 (citations omitted). See also generally Kleindienst v. Mandel, 408 U.S. 753 (1972); Chinese Exclusion Case, 130 U.S. 581 (1889). Congress has determined that those aliens engaged in the United States in the business of prostitution should not be allowed to remain in this country. This is so whether or not the activity in question is lawful under local law. The respondent argues that she should not face deportation because she did nothing illegal in the United States. The legality of her conduct is not the issue, and we note that the Immigration and Nationality Act provides for the deportation of aliens in numerous cases where there may have been no unlawful action on the part of the alien. See section 241(a) of the Act.

The respondent argues that the Fifth Amendment guarantee that no person shall be deprived of life, liberty or property without due process includes the right to "engage in any of the common occupations of life," and that permanent resident aliens have been found to be entitled to engage in most occupations. With these statements we have no dispute. It does not follow, however, that a resident alien can engage in any occupation. See e.g. Hampton v. Mow Sun Wong, 426 U.S. 88 (1976); Mow Sun Wong v. Campbell, 626 F.2d 739 (9 Cir. 1980). Congress has decreed that those aliens whose occupation is running a house of prostitution are deportable. No exemption was provided in the statute for those who engaged (sic) in the lawful management of such a business. The respondent comes within the class described by Congress, and she is therefore deportable under section 241(a)(12).

The respondent claims that to require her to determine "at her peril whether or not the exercise of her constitutional right to engage in an occupation lawful under the State of Nevada. . . subjects her to deportation" places on her an intolerable burden. The requirements of the statute are clear: aliens (sic) enagaging in the respondent's profession are both excludable and deportable. The bar against prostitution is one of the oldest in our immigration laws, and the respondent could have known from the beginning that her actions would subject her to deportation. Moreover, other aliens in the respondent's position, that is, aliens who lawfully engaged in the business of prostitution in Nevada, have found themselves subject to the provisions of section 241(a)(12). See Marlowe v. INS, 457 F.2d 1314 (9 Cir 1972).

The respondent's final argument in her brief on appeal involves section 241(a)(12)'s prohibition against aliens' connections with houses of prostitution or other immoral places. She admits that "house of prostitution" is readily defined, but contends that "other immoral place" should be defined according to local standards. Presumably, she believes houses of prostitution would not be considered immoral places in Nevada. We need not decide how Nevada or Winnemucca views such establishments. The respondent admittedly owned and operated a house of prostitution, an activity specifically prohibited by the statute. We therefore are not required in this case to define "other immoral place."

As the respondent's appeal is without

merit, it must be dismissed.

ORDER: The appeal is dismissed.

David L. Milhollan

Chairman

Opposition

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No. 81-1552

In the Supreme Court of the United States

OCTOBER TERM, 1981

SYLVIA GINO BINDER, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether Section 241(a)(12) of the Immigration and Nationality Act, 8 U.S.C. 1251(a)(12), which provides for the deportation of any alien who manages a house of prostitution, violates the Due Process Clause of the Fifth Amendment as applied to a permanent resident alien who manages houses of prostitution that are lawful and licensed under state law.

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IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-2), the opinion of the Board of Immigration Appeals (Pet. App. B1-5), and the opinion of the immigration judge are not reported.

JURISDICTION

The judgment of the court of appeals was entered on November 19, 1981. The petition for a writ of certiorari was filed on February 17, 1982. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 241(a)(12) of the Immigration and Nationality Act, 8 U.S.C. 1251(a)(12), provides in pertinent part:

> (a) Any alien in the United States * * * shall, upon the order of the Attorney General, be deported who—

(12) * * * is or at any time after entry has been the manager * * * of a house of prostitution or any other immoral place.

STATEMENT

Petitioner, age 60, is a citizen of France who was admitted to the United States as a visitor in 1965 (A.R. 15).[1] Between 1949 and 1965, petitioner frequently came to the attention of the Swiss police for activities relating to prostitution (A.R. 28-29, 59, 60, 66-69), including the management of brothels (A.R. 67, 68, 69). Between 1966 and 1975, petitioner was arrested and convicted for prostitution on several occasions in or near Miami, Florida (A.R. 53-54, 57, 59, 62-64). In 1969, her status was adjusted to that of a permanent resident alien (A.R. 15). She has no relatives in the United States (A.R. 46).

In 1978, the Immigration and Naturalization Service issued an order to show cause alleging that petitioner was the owner and operator of two houses of prostitution in Winnemucca, Nevada (A.R. 49-51). Those establishments were legal under Nevada law (Pet. App. A1). The Service charged that petitioner was deportable under Section 241(a)(12) of the Immigration and Nationality Act, 8 U.S.C. 1251(a)(12), which provides for the deportation of any alien who is or "at any time after entry has been the manager * * * of a house of prostitution or other immoral place" (A.R. 51).

At her deportation hearing, petitioner admitted that she was the owner and manager of two houses of prostitution as charged (A.R. 15-16). Local licenses and work permits for the operation of those premises were also placed in evidence (A.R. 16). The Immigration Judge held that petitioner was deportable and that Section 241(a)(12) applies to managers

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[1] "A.R." refers to the certified administrative record filed in the court of appeals.

of lawful houses of prostitution (A.R. 16). The Board of Immigration Appeals dismissed petitioner's appeal (Pet. App. B1-5), and the court of appeals affirmed (Pet. App. A1-2).

ARGUMENT

It is undisputed that petitioner, a permanent resident alien, was the owner and manager of two houses of prostitution in Winnemucca, Nevada, that are lawful and licensed under state and local law. Section 241(a)(12) of the Immigration and Nationality Act provides for the deportation of any alien who "is or at any time after entry has been the manager * * * of a house of prostitution or any other immoral place." Petitioner does not contend that she can escape the plain meaning of the terms of the statute. Nor does she argue that Congress intended to exempt aliens who manage houses of prostitution that are lawful under state or local law.[2] Instead, she contends that the statute violates due process by depriving her of the right to engage in a lawful occupation (Pet. 6), by improperly interfering with the administration of the internal affairs of the State of Nevada (Pet. 7), and by penalizing her for "the exercise of a state conferred right" (Pet. 8). Petitioner's arguments are without merit and do not warrant further review by this Court.

1. Section 241(a)(12) does not violate the Constitution by preventing petitioner from managing lawful houses of prostitution. Aliens within the United States are entitled to

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[2]In any event, there would be no basis for such a claim. Nevada enacted legislation authorizing counties to license houses of prostitution (see 1881 Nev. Stats. ch. 48 § 6) (current version at Nev. Rev. Stat. § 244.345(8) (1981)) long before the enactment of the Immigration and Nationality Act of 1952, 8 U.S.C. 1101 *et seq.* Yet there is nothing to suggest that Congress intended Section 241(a)(12) of that Act to apply only to illegal houses of prostitution, rather than to all such establishments, as the plain language of the statute provides.

due process and the equal protection of the laws (*Wong Wing* v. *United States*, 163 U.S. 228 (1896); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886)). Aliens who have been permitted by acts of Congress to enter and remain in this country have a legitimate interest in following the occupations of their choice. *Hampton* v. *Mow Sun Wong*, 426 U.S. 88, 102-103 (1976); *Truax* v. *Raich*, 239 U.S. 33, 41 (1951). State laws barring such aliens from certain jobs must satisfy the standards imposed by the Equal Protection Clause. See, *e.g.*, *Cabell* v. *Chavez-Salido*, No. 80-990 (Jan. 12, 1982); *Ambach* v. *Norwick*, 441 U.S. 68 (1979); *In re Griffiths*, 413 U.S. 717 (1973); *Sugarman* v. *Dougall*, 413 U.S. 634 (1973); *Truax* v. *Raich*, *supra* 239 U.S. at 41. Federal laws imposing comparable restrictions are assessed under the Due Process Clause. *Hampton* v. *Mow Sun Wong*, *supra* 426 U.S. at 88. See *Mathews* v. *Diaz*, 426 U.S. 67 (1976).

Section 241(a)(12), however, does not impose restrictions upon the employment opportunities of aliens who have been permitted by acts of Congress to enter and remain in this country. On the contrary, Section 241(a)(12) is a deportation statute and governs the terms and conditions under which aliens are permitted to remain in the United States. "It is entirely settled that the authority of Congress to prohibit aliens from coming within the United States and to regulate their coming includes authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend." *Zakonaite* v. *Wolf*, 226 U.S. 272, 275 (1912) (deportation of prostitute). Congress has broad latitude in specifying the grounds upon which an alien may be deported. See *Galvan* v. *Press*, 347 U.S. 522, 531 (1954); *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952); *Bugajewitz* v. *Adams*, 228 U.S. 585, 591 (1913) (deportation of prostitute); *Zakonaite* v. *Wolf*, *supra*, 226 U.S. at 275; *Fong Yue Ting* v. *United States*, 149 U.S. 698, 731 (1893). Such grounds may include lawful conduct. See, *e.g.*,

Galvan v. *Press, supra* 347 U.S. at 522; *McJunkin* v. *INS*, 579 F. 2d 533, 536 (9th Cir. 1978). Congress surely acted within the broad scope of its authority in providing for the deportation of aliens engaged in managing a house of prostitution, an activity that generally has been viewed as socially undesirable.

2. Section 241(a)(12) also does not unconstitutionally interfere with the internal affairs of the State of Nevada, as petitioner maintains (Pet. 7). The admission and expulsion of aliens is a power committed exclusively to the federal government, and therefore claims that the exercise of that authority is restricted by local police power have been consistently rejected. See, *e.g.*, *Bugajewitz* v. *Adams, supra*, 228 U.S. at 591. *Zakonaite* v. *Wolf, supra*, 226 U.S. at 275. In an opinion affirming the deportation of an alien for prostitution, this Court stated:

> It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. * * * The coincidence of local penal law with the policy of Congress is an accident.

Bugajewitz v. *Adams, supra*, 228 U.S. at 591.

3. Petitioner's contention (Pet. 8) that it is fundamentally unfair to deport her for exercising a "state conferred right" is also without merit. Although petitioner complied with state licensing requirements, the State of Nevada certainly did not purport to relieve her of the obligation to comply as well with any applicable federal laws. Nor of course could a state do so without violating the Supremacy Clause.

There also is no substance to petitioner's suggestion (Pet. 8) that her deportation is unfair because she relied in good faith on state law. Not only is the meaning of Section

241(a)(12) itself unambiguous, but in *Marlowe* v. *INS*, 457 F. 2d 1314 (9th Cir. 1972), an alien registered as a prostitute in Nevada had been held deportable under that provision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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